IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. App. 843/2006

Judgment delivered on: December 4 ,2007

National Insurance Co. Ltd. ..... Appellant.
Through: Mr.Pankaj Seth, Advocate

versus

Smt. Sheela Devi & Ors. ..... Respondents
Through: Mr.L.K. Tyagi, Advocate for respondent Nos.1 to 5.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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The present appeal preferred under Section 173 of The Motor Vehicles Act, 1988, arises out of the award dated 10th July, 2006 of the Motor Accident Claims Tribunal, whereby the Tribunal awarded a sum

of Rs. 17,62,120/- along with interest @ 7.5% per annum to the claimants from the date of filing of the petition till its realisation.

The brief facts relevant for deciding the instant case are that on 25/9/2002 at about 10:45pm, the deceased Sh. Shiv Prasad was coming to his residence at Noida from his office at Okhla in his Maruti car bearing registration no. DL 3 CN 3919. On his reaching Madanpur Khadar Mode at Mathura Road, New Delhi, a truck bearing registration no. HR 29 A 7977, which was being driven in a rash and negligent manner and at a very high speed by its driver, Sh. Sudhir Kumar, struck against the aforesaid maruti car. As a result, both, the truck and the car turned turtle and in the said accident, Sh. Shiv prasad received fatal injuries. He was removed to AIIMS from the accident site, where he was declared dead. A claim petition was filed by widow and children of the deceased before the Motor Accident Claims Tribunal and award was made on 10/7/2006. Aggrieved with the said award present appeal is preferred by the appellant insurance company.

Present appeal is limited to the question of doubling the income of the deceased to compute the loss of dependency in accordance with the judgment of the Hon'ble Apex Court in **Sarla Dixit vs. Balwant Yadav – AIR 1996 SC 1274.**

Sh. Pankaj Seth, counsel for the appellant insurance company contends that the tribunal has erred in doubling the income

of the deceased on the ground that had he been in the job for another ten years then his income would have been doubled.

Per contra, Sh. L.K. Tyagi, counsel for respondents no. 1 to 5 has vehemently denied the said contention of the counsel for the appellant. The counsel urged that the award made by the Tribunal is just, fair and equitable in the facts and circumstances of the case.

I have heard learned counsel for the parties and have perused the record.

On perusal of the award it becomes clear that the deceased was having a bright career and had a good chance of advancement in life, career and earnings had he not died in the accident. PW-1, Smt. Sheela Devi has in her evidence by way of affidavit deposed that the deceased was serving as a Production Manager at M/s. Fascination India at Okhla Industrial Area, Phase-I and was earning a salary of Rs. 13,200 pm. The copies of the salary slip and salary certificate were duly brought on the record, as Ex. PW 1/7 & 1/8, and were also proved on the record. The said witness also deposed that the deceased was a hard-working man and had a bright chance of his promotion and he was likely to become the General Manager of the Company had he not died in the accident, therefore, his income would have increased manifold in the future. The said deposition of PW- 1 has been further corroborated by the witness, PW-

3, the Accounts Manager of the employer of the deceased. PW-3 had also brought the salary record, Ex. PW3/B, of the deceased. PW-3 also deposed that at the time of his appointment on 16/8/1981, the deceased was drawing Rs. 3,500 pm as salary and gradually over a period of time and at the time of the accident he was drawing Rs. 13,200 pm as salary. The said witness also deposed that the salary of the incumbent on the post of Production Manager in their firm is around Rs. 35,000-Rs. 36,000 pm. He further deposed that had the deceased not died in the accident, he would have been drawing salary to the tune of Rs. 35,000 pm approximately.

The issue pertaining to the doubling of the income of the deceased for the purpose of computation of the loss of dependency is no more res integra. It is the law of the land that while arriving at a just compensation, the future prospects of the deceased are to be taken into consideration if there is substantial material on record to support the said claim regarding the future prospects. In this regard the relevant portion of para 8 of the judgment in the case of **Bijoy Kumar Dugar v. Bidya Dhar Dutta, (2006) 3 SCC 242** is reproduced below:-

> "The mere assertion of the claimants that the deceased would have earned more than Rs.8000 to Rs.10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant

> facts are proved by leading cogent and reliable evidence before MACT. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be."

In the case in hand, there is sufficient evidence on record for granting future prospects while computing compensation. In the instant case, from the testimony of PW-3 and the documents placed on the record by him, there is no iota of doubt left that since the appointment of the deceased in the year 1981 till his death in the year 2002, i.e. almost in the span of 20 years, the income of the deceased has increased four times. Further, the tribunal has observed in the award that on the basis of the appointment letter of the deceased, Ex. PW-1/3, no date of superannuation of the deceased has been mentioned and on the basis of his age, i.e. 50yrs, it could be safely taken that he would have worked for another 10yrs and on the basis of the said observation and the judgment of the Hon'ble Apex Court in **Sarla Dixit vs. Balwant Yadav – AIR 1996 SC 1274,** the tribunal has granted the benefit of future prospects in the instant case. I do not find any infirmity in the award made by the tribunal in this regard.

In view of the above discussion, the present appeal is dismissed.

December , 2007 **KAILASH GAMBHIR J.**